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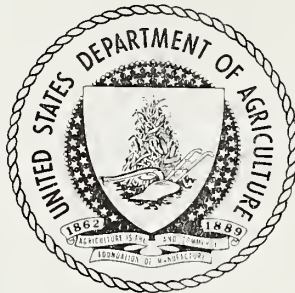
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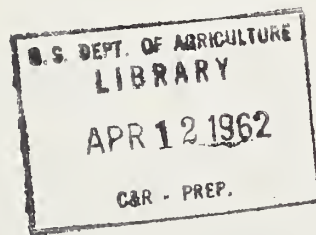
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Questions and Answers

SELF-HELP STABILIZATION PROGRAMS

With Use Of

MARKETING AGREEMENTS AND ORDERS



UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

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The following questions and answers on self-help stabilization programs with use of marketing agreements and orders are designed to provide a general background on main provisions of the enabling legislation.

Various commodities will have problems particular to the industry, and specific applications of marketing agreement and order provisions will vary to some degree with each.

Marketing agreements and orders were authorized by the Marketing Agreement Act of 1937, which re-enacted and amended the Agricultural Adjustment Act of 1933. Numerous amendments have been included through the years. The Agricultural Act of 1961 extended use of marketing agreements and orders to include any agricultural commodity not excluded in the Act.

Questions and Answers  
**540**  
Self-help Stabilization Programs  
With Use of  
Marketing Agreements and Orders

1. Q. What is a marketing agreement?

A. A marketing agreement is voluntary. It is a contract entered into by the Secretary of Agriculture with handlers of a particular commodity. It is binding only to those handlers who sign it. A marketing agreement alone is seldom effective.

2. Q. What is a marketing order?

A. A marketing order is a legal document setting the limits within which an agricultural industry can operate a program of self-regulation. It defines the terms handler and producer, the commodity to be regulated and the area to be covered. It provides for an Advisory Board to administer the order, the number of members, and terms of office. It lists the economic tools to be used, and has procedures for financing provisions of the order, and the penalties for violations.

3. Q. What role does the government play in a self-help program using a marketing order?

A. By law, final responsibility and authority in carrying out provisions of a marketing agreement or order rests with the Secretary of Agriculture. Traditionally, however, the Secretary has followed the recommendations of the industry Board and has participated in the programs to protect the interest of individuals and the general public, and to be certain the program's administration follows the declared policy of Congress.

4. Q. Does the legislation for marketing agreements and orders regulate markets?

A. No. All legislation concerning marketing agreements and orders is enabling legislation only. It imposes no control over the marketing of any commodity -- it doesn't even guarantee that any control will necessarily be established. It's merely the legal framework providing the farmer the basis to set up a program to stabilize his market.

5. Q. What is the principal purpose of a marketing agreement or order?

A. As set forth by Congress, to establish and maintain orderly marketing conditions for commodities in interstate commerce so that the farmer can achieve parity of income with other economic groups. The consumer is offered an even and adequate supply at fair prices.

6. Q. What does such a self-help program offer the farmer?

A. It offers the farmer the means to strengthen his bargaining power in the national economy, and to have some of the advantages long enjoyed by industry.

7. Q. How does a self-help program using a marketing order differ from other agricultural measures?

A. The program differs from other adjustment plans in that it combines voluntary and regulatory control within a commodity industry. The program also is initiated, developed and directed by the industry.

8. Q. What are the expanded provisions in the Agricultural Act of 1961 that bear most directly on self-help programs?

A. The Act provides that any agricultural commodity is now eligible to come under provisions of a marketing agreement or order, unless it is specifically excluded in the Act. Provisions also authorize the Secretary of Agriculture to contact commodity groups to review needed legislation and programs.

9. Q. How may a commodity group start a self-help program?

A. The producers get together and select representatives to ask the Secretary of Agriculture for his assistance on their problem. If he thinks the situation warrants it, he may appoint a committee, representing all segments of the industry, to study the problem and submit to him a proposed plan of operation, a supply management program, a marketing order, or any other action thought necessary.

10. Q. Are public hearings held?

A. Yes. If the Secretary thinks the initial draft of the proposed marketing order will be helpful, he'll schedule public hearings so that all sides can present their arguments and submit evidence. There can be numerous hearings held in the various regions in which the commodity is grown. Hearings are usually held not less than 15 days after date of publication in the Federal Register. On the basis of what is entered as evidence in the hearings, the Department of Agriculture issues what is called a recommended decision.

11. Q. Why only a recommended decision?

A. Because those who don't agree with the proposed decision are permitted by law to file exceptions. After these are reviewed, the Secretary can issue a final decision.

12. Q. What happens after the Secretary issues his final decision?

A. If the Secretary in his final decision has approved the proposed marketing order, it is submitted to producers for approval. They accept it only when two-thirds of them, or those handling two-thirds of the volume, approve it in a referendum.

13. Q. What constitutes a two-thirds vote?

A. A two-thirds majority means two-thirds of those voting in the referendum, and not two-thirds of all growers in the industry.

14. Q. How is the referendum handled?

A. Usually, voting is by mail, and all ballots are secret. The producer is mailed a copy of the proposed marketing order, and a ballot with a return envelope. County agents' offices can supply ballots also. Producer lists are usually supplied by those interested for or against the proposed marketing order. Means of getting out the vote is strictly up to the industry. The Department of Agriculture, however, pays the cost of the referendum, and its field offices offer their services to conduct the referendum.

15. Q. Can a cooperative vote in a referendum?

A. Yes, a cooperative can vote as a unit for its members -- or the volume produced by the members, if the by-laws of the cooperative permit such a vote. A cooperative may also be the representative of a producer group to propose establishment of a marketing order.

16. Q. Do handlers vote on a marketing order?

A. No. The Secretary gives handlers an opportunity to sign a marketing agreement containing provisions of the proposed order.

17. Q. What if the handlers don't accept the agreement?

A. As long as producer approval has been given in referendum, the Secretary is authorized to issue an order anyway, and it is binding on all handlers of the commodity. The Secretary does this when he finds it is the only practicable way to carry out the objectives of the Act.

18. Q. What if a handler still doesn't agree?

A. He can appeal the Secretary's decision to the Judicial Officer of the Department of Agriculture, by special procedures, and the Judicial Officer's ruling is subject to appeal to a District Court of the United States.

19. Q. Is a retailer bound by the order?

A. No, not in his capacity as a retailer.

20. Q. Who is a producer?

A. Ordinarily, a person who assumes ownership risk in producing the commodity. A producer may be defined specifically in orders for particular commodities.

21. Q. Who is a handler?

A. A person who handles or processes the commodity, and who introduces it into interstate commerce.

22. Q. Do regulatory provisions in a marketing order apply to both?

A. No, only to the handler. The producer is not regulated in his production. Regulations at the producer level would require the approval of Congress.

23. Q. Can a producer be a handler?

A. Yes, if he markets his own product.

24. Q. Does the Secretary of Agriculture prepare the proposed marketing order?

A. No. A proposed order originates with, and is planned by, the commodity group concerned. However, Department of Agriculture experts may be called upon to assist in the preparation of the proposed order.

25. Q. Is the Secretary's decision on issuing a marketing order, subject to producer's approval, made on the basis of evidence submitted at the hearings?

A. Yes. The proposed program must apply to the problems of the industry, offer a well-founded plan for market stabilization, protect the income of producers and handlers, and protect the consumer. Careful and full presentation of facts at the hearings is necessary.

26. Q. Can a marketing order program be stopped after it is in operation?

A. Yes. An order may be terminated by the Secretary of Agriculture at the end of a current marketing period whenever more than 50 per cent of the producers, who produced during a representative period more than 50 per cent of the volume of the commodity, request a termination. An order may be terminated, or suspended, by the Secretary also when he finds it obstructs or no longer tends to achieve the declared policy of the enabling legislation.

27. Q. Can a marketing order be amended?

A. Yes. After the program is established, amendments may be recommended to the Secretary of Agriculture by any interested party. To amend an order, the same general procedure is followed as for setting up the marketing order, with public hearings, a recommended decision and opportunity for any interested party to submit exceptions, then a final decision by the Secretary, and a referendum of producers.

28. Q. How is the board selected that administers the self-help program?

A. The board usually is selected by the Secretary of Agriculture from candidates nominated by producer and handler groups at meetings held for that purpose. Members serve for terms as specified in provisions of the marketing order.

29. Q. How big is the board?

A. The number of members is specified in the marketing order. An administrator may be hired by the board to carry out its directives and manage the office.

30. Q. Who pays for administering the program?

A. The Secretary of Agriculture authorizes administering boards to collect assessments from handlers at a uniform rate for expenses. The boards do this by submitting an advance budget, and a proposed assessment, for the Secretary's approval.

31. Q. What regulatory provisions may be included in a marketing agreement or order?

A. Commodity marketing orders may specify grades, size, quality, pack or maturity of the commodity shipped to market. One or any combination of the following may be included: regulation of quantity of the product which may be shipped to market during a specified period; establishment of a reserve pool and equitable distribution of returns from its sale; surplus control and fixing size, capacity, weight, dimensions or pack of containers used in marketing. In addition, provisions to prohibit unfair trade practices and to establish price posting for handlers may be included in a marketing order. Marketing research and development may also be authorized along with other provisions.

32. Q. How is the quantity of the commodity which may be shipped to market determined?

A. The total quantity is allocated among all handlers under a uniform rule on the basis of past performance of a handler, or the proportionate amount of the commodity the handler has available for current shipment.

33. Q. What does surplus control mean?

A. This involves determining the extent of a surplus, providing for the control and disposition of the surplus and for equalizing the burden of surplus elimination among producers and handlers.

34. Q. How can a surplus be handled?

A. Two examples would be by diversion to uses that will not compete with the primary market, or by selling in the foreign market. Some commodity surpluses have been diverted to use in the School Lunch Program and to welfare distribution.

35. Q. What is handler price posting?

A. Each handler is required to file selling prices, and to sell only at those prices. Handlers may change the prices at any time but adequate notice must be given.

36. Q. What are market development and research projects?

A. These are designed to assist, improve, or promote the marketing, distribution, and consumption of the commodity.

37. Q. How are they paid for?

A. From the administrative funds collected by assessments on handlers.

38. Q. Are there any regulations for the board?

A. Yes. They are required to keep books; make audits; analyze growing and marketing conditions; give notice of meetings, regulations and policies, and must provide information requested by the Secretary of Agriculture.

39. Q. Is there any check on board activities?

A. Yes. The Secretary of Agriculture is authorized to examine the books, papers, records, accounts, correspondence, contracts, documents, and memoranda of the boards.

40. Q. Can a marketing order directly fix consumer prices for a commodity?

A. No.

41. Q. Can producers be regulated by quotas on their production or sales in a marketing order?

A. No. The Department of Agriculture recommended that farmers be permitted to use this authority in marketing orders but Congress did not provide it. Congress did provide that the Secretary may consult with committees of producers to determine the need for new legislation, and to make recommendations for legislative changes if there is a need for them.

42. Q. What commodities were excluded in the Agricultural Act of 1961 from marketing order programs?

A. Honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not turkeys), eggs (but not turkey hatching eggs), and fruits and vegetables for canning and freezing, with the exception of olives, grapefruit, cherries, and cranberries, and apples in designated States.

43. Q. Can a marketing order be nationwide?

A. Yes, if the Secretary of Agriculture finds that a national order is necessary to effectuate the enabling legislation.

44. Q. Are there any exemptions from a marketing agreement or order, or from regulations issued under the order?

A. The marketing order usually specifies the types of shipments which are not covered and not subject to regulation.

45. Q. How is a marketing order enforced?

A. There are three types of legal action which may be taken against a person who violates an order: Civil action to obtain an injunction; civil action for forfeitures, and criminal action.

46. Q. Are imports of a regulated commodity subject to similar regulations?

A. Yes, for some commodities and under certain circumstances. Whenever the grade, size, quality or maturity of the following products produced in the United States is regulated by an order, the importation of any such commodity is prohibited unless the imported commodity complies with the same or comparable restrictions: tomatoes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates and eggplants.

47. Q. How do marketing orders for milk vary from those for other commodities?

A. Basically, milk marketing orders fix minimum prices for producers. This is done by classifying milk according to use, and determination of minimum prices for the various uses. Another difference is in the administration of the marketing orders. For commodity crops, a board of handlers and producers directs the program. A Federal Market Administrator directs the milk order.



